

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

RICHARD GRAVELY,

Plaintiff,

v.

Civil Action No. 2:11-0232

MACY'S and
SCOTT McNEALLY,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending are defendants' motion to dismiss filed May 19, 2011, and plaintiff's motion for summary judgment filed June 3, 2011.

This action was previously referred to Mary E. Stanley, United States Magistrate Judge, who has submitted her Proposed Findings and Recommendation ("PF&R") pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B).

The court has reviewed the PF&R entered by the magistrate judge on October 24, 2011. The magistrate judge recommends dismissal of plaintiff's complaint for failure to state a claim upon which relief can be granted. She offers alternative recommendations for dismissal, namely, res judicata and the failure to demonstrate subject matter jurisdiction

inasmuch as plaintiff has neither shown that defendants acted under color of law pursuant to 42 U.S.C. § 1983 or that the exercise of diversity jurisdiction is appropriate.

On November 7, 2011, plaintiff objected. The objections, however, do not meet the analyses offered by the magistrate judge. The court concludes that the objections are without merit and that the ultimate recommendation of dismissal is appropriate. Inasmuch as the Supreme Court of Appeals of West Virginia still has under consideration plaintiff's appeals of the state circuit court orders about which he here complains, the court does not reach the res judicata recommendation. The recommendation respecting the absence of subject matter jurisdiction, however, is plainly correct.

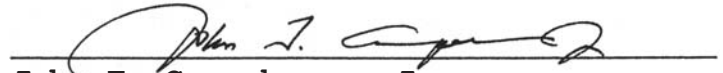
Having reviewed the entirety of the record herein, it is ORDERED that:

1. The PF&R be, and it hereby is, adopted by the court and incorporated herein to the extent stated above;
2. That defendants' motion to dismiss be, and it hereby is, granted;
3. That plaintiff's motion for summary judgment be, and it hereby is, denied; and

4. This action be, and it hereby is, dismissed with prejudice.

The Clerk is directed to forward copies of this written opinion and order to the pro se plaintiff, all counsel of record, and the United States Magistrate Judge.

DATED: March 28, 2012



John T. Copenhaver, Jr.
United States District Judge